

AMENDED IN SENATE AUGUST 23, 2004

AMENDED IN SENATE JULY 2, 2004

AMENDED IN ASSEMBLY MAY 20, 2004

AMENDED IN ASSEMBLY APRIL 21, 2004

AMENDED IN ASSEMBLY APRIL 12, 2004

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CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 1874**

**Introduced by Assembly Member Cohn**

February 3, 2004

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An act to add Section 14666.9 to the Government Code, and to amend Sections 671.5 and 673 of, and to add Section 679.1 to, the Streets and Highways Code, relating to telecommunications.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1874, as amended, Cohn. Telecommunications: Information and Advanced Communications Deployment Act of 2004.

Existing law provides that the Department of Transportation shall have full possession and control of the state highways and associated property. Existing law requires the department to approve or deny an application from an applicant for an encroachment permit within 60 days of receiving a completed application that meets specified requirements. Existing law provides that the department's failure to notify an applicant within the required time period that a permit is denied is deemed to constitute approval of the permit. Existing law

authorizes an applicant for an encroachment permit to appeal to the director of the department for a final determination of the department's denial of an application. Existing law requires the director to make a final written determination within 60 days after receipt of an applicant's appeal.

This bill would adopt the Information and Advanced Communications Deployment Act of 2004. The act would make it the public policy of the state to, among other things, promote the availability of a wide range of communications services to residents of California and to improve the opportunities for economic development and delivery of communications services. The bill would require the department to approve or deny an application for an encroachment permit from specified telephone or telegraph corporations, and cable television corporations, within 45 days. The bill would also entitle a communications provider to a permit, renewable annually, for the operation, repair, maintenance, or minor alteration of its facilities and service connections that do not require excavation, located or installed in state highways. The bill would authorize the department to revoke the permit under certain conditions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature finds and declares the  
2 following:

3 (a) It is the intent of the Legislature to promote the accelerated  
4 deployment of next-generation broadband networks in California,  
5 irrespective of the technological platform used to deploy those  
6 services in California, whether through wireless, Internet, cable,  
7 satellite, or telecommunications networks.

8 (b) Information and advanced communications services are the  
9 foundations for California's continued technological and  
10 economic leadership. It has been estimated that the widespread  
11 deployment of information and advanced communications  
12 services networks can generate an increase of over \$300 billion in  
13 *the states' incremental GSP gross domestic product* and nearly  
14 two million new jobs for the State of California over a 10-year  
15 period.



1 (c) Accelerated deployment of information and advanced  
2 ~~communication~~ *communications* services infrastructure is a  
3 critical component of the state's economic development and an  
4 improved quality of life for its constituency.

5 (d) In order to support the goal of accelerated deployment of  
6 information and advanced communications services, state entities  
7 should ensure prompt access to public lands by expediting and  
8 streamlining rights-of-way access for the deployment of  
9 information and advanced communications services  
10 infrastructure.

11 SEC. 2. Section 14666.9 is added to the Government Code, to  
12 read:

13 14666.9. (a) This section shall be known, and may be cited  
14 as, the Information and Advanced Communications Deployment  
15 Act of 2004.

16 (b) It is the public policy of the state to do all of the following:

17 (1) Promote the availability of a wide range of communications  
18 services to residents of this state at reasonable cost, including the  
19 rapid accelerated deployment of information and advanced  
20 communications services networks in the State of California.

21 (2) Encourage the introduction of new services, the entry of  
22 new providers, the development of new technologies, and increase  
23 investment in the ~~communication~~ *communications services*  
24 infrastructure of this state.

25 (3) Improve the opportunities for economic development and  
26 the delivery of communications services.

27 (c) Nothing in this section alters the rights provided to  
28 telegraph or telephone corporations pursuant to Section 7901 of  
29 the Public Utilities Code.

30 SEC. 3. Section 671.5 of the Streets and Highways Code is  
31 amended to read:

32 671.5. (a) The department shall either approve or deny an  
33 application from an applicant for an encroachment permit within  
34 60 days of receiving a completed application, as determined by the  
35 department. An application for an encroachment permit is  
36 complete when all other statutory requirements, including the  
37 California Environmental Quality Act (Division 13 (commencing  
38 with Section 21000) of the Public Resources Code), have been  
39 complied with. The department's failure to notify the applicant  
40 within that 60-day period that the permit is denied shall be deemed

1 to constitute approval of the permit. Thereafter, upon notifying the  
2 department, the applicant may act in accordance with its permit  
3 application, as if the permit had been approved.

4 (b) The department shall either approve or deny an application  
5 from a telephone or telegraph corporation, as defined in Sections  
6 234 and 236 of the Public Utilities Code, or a cable television  
7 corporation, as defined in Section 215.5 of the Public Utilities  
8 Code, who is an applicant for an encroachment permit, within 45  
9 days of receiving a completed application, as determined by the  
10 department. An application for an encroachment permit is  
11 complete when all other statutory requirements, including the  
12 California Environmental Quality Act (Division 13 (commencing  
13 with Section 21000) of the Public Resources Code), have been  
14 complied with. The department's failure to notify the applicant  
15 within that 45-day period that the permit is denied shall be deemed  
16 to constitute approval of the permit. Thereafter, upon notifying the  
17 department, the applicant may act in accordance with its permit  
18 application, as if the permit had been approved.

19 (c) If the department denies an application for an encroachment  
20 permit, it shall, at the time of notifying the applicant of the denial,  
21 furnish to the applicant a detailed explanation of the reason for the  
22 denial.

23 (d) The department shall adopt regulations prescribing  
24 procedures for an applicant to appeal to the director for a final  
25 determination of the department's denial of an application. The  
26 appeal shall be made in writing to the director. There shall be a  
27 final written determination by the director within 45 calendar days  
28 after receipt of the applicant's written appeal. The adopted  
29 regulations shall require the appellant to pay to the department a  
30 fee of not more than 50 percent of the estimated administrative cost  
31 to the department of conducting the appeal.

32 (e) Nothing in this section precludes an applicant and the  
33 department from mutually agreeing to an extension of any time  
34 limit provided by this section.

35 SEC. 4. Section 673 of the Streets and Highways Code is  
36 amended to read:

37 673. (a) Any permit issued to a permittee of the class  
38 specified in Section 678 shall contain a provision that in the event  
39 the future improvement of the highway necessitates the relocation  
40 or removal of the encroachment the permittee will relocate or

1 remove the same at the permittee's sole expense. In that event, the  
2 department shall serve on the permittee its written demand  
3 specifying the place of relocation, or that the encroachment is to  
4 be removed from the highway, and specifying a reasonable time  
5 within which the work of relocation is to be commenced. The  
6 permittee shall commence the relocation or removal within the  
7 time specified in that demand and thereafter diligently prosecute  
8 until completion.

9 (b) All permits, including those issued pursuant to Section  
10 679.1, but excluding those issued to permittees of the class  
11 specified in Section 678 or the class specified in Section 680, are  
12 revocable on five days' notice and the encroachment shall be  
13 removed or relocated as may be specified by the department in the  
14 notice revoking the permit and within the time specified by the  
15 department, which time shall not be less than five days, unless the  
16 permit so provides.

17 (c) The department may waive the requirement of subdivision  
18 (a) that the permittee bear the sole expense of relocating or  
19 removing an encroachment, if the encroachment consists of a track  
20 or roadway that serves as an exclusive public mass transit  
21 guideway owned, operated, and maintained by a publicly owned  
22 mass transit authority.

23 SEC. 5. Section 679.1 is added to the Streets and Highways  
24 Code, to read:

25 679.1. Any communications provider who receives, or has  
26 received, an encroachment permit, is entitled to an annually  
27 renewable permit for the operation, repair, maintenance, or minor  
28 alteration of its facilities and service connections that do not  
29 require excavation, located or installed in state highways. A  
30 communications provider with an annually renewable permit shall  
31 give notice to the department whenever it accesses its facilities that  
32 are located or installed in state highways. The department may  
33 revoke the permit if the permittee fails to comply with the  
34 provisions of this article, after reasonable notice and an  
35 opportunity to cure is provided to the permittee.

36 SEC. 6. *Nothing in this act is intended to affect the outcome*  
37 *of pending litigation between the Department of Transportation*  
38 *and a telecommunication company in Pacific Bell v. State of*

- 1 *California (United States District Court for the Northern District*
- 2 *of California, case number 02-02500 JSW).*

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